

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROSCOE RICO MARTIN,

Petitioner,

Case Number: 23-cv-12513
Honorable Linda V. Parker

v.

BRYAN MORRISON,

Respondent.

/

**ORDER TRANSFERRING CASE TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner Roscoe Rico Martin has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 1.) Martin challenges his 1989 second-degree murder conviction rendered in the Circuit Court for Genesee County, Michigan. The trial court sentenced Martin to a term of imprisonment of 50 to 76 years.

In 2015, Martin filed a federal habeas petition challenging the same conviction at issue in his current petition. A petitioner challenging a state court judgment under § 2254 must “seek authorization in a federal appeals court before filing a ‘second or successive application’ in district court.” *In re Stansell*, 828 F.3d 412, 414 (6th Cir. 2016) (citing 28 U.S.C. § 2244(b)(3)(A)). A habeas petition is “second or successive” if it challenges the same conviction challenged

in a prior petition and the prior petition was decided on the merits. *In re William Garner*, 612 F.3d 533, 535 (6th Cir. 2010) (citing *In re Cook*, 215 F.3d 606, 607-08 (6th Cir. 2000)). Federal district courts lack jurisdiction to consider successive habeas petitions absent preauthorization from the court of appeals. *Franklin v. Jenkins*, 839 F.3d 465, 473 (6th Cir. 2016) (citing 28 U.S.C. § 2244(b)(3)).

Martin's 2015 petition was denied as untimely and dismissed with prejudice. *Martin v. Mackie*, No. 1:15-CV-594, 2015 WL 4507812 (W.D. Mich. July 24, 2015). The dismissal of a habeas petition based on timeliness constitutes a disposition on the merits. *In re Cook*, 215 F.3d at 607-08. Therefore, the current petition is successive to Martin's 2015 petition. Martin was required to obtain authorization from the Sixth Circuit Court of Appeals before filing the petition here, which he did not do. When a successive petition for habeas corpus relief is filed in the district court without prior authorization, the district court must transfer the petition to the Court of Appeals pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly,

IT IS ORDERED that the Clerk of the Court shall transfer this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631

for a determination of whether Petitioner may file a successive petition.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: October 26, 2023

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, October 26, 2023, by electronic and/or U.S. First Class mail.

s/Aaron Flanigan
Case Manager